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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

)
Amendment of Part 97 of the)
Commission's Rules Concerning)
Message Forwarding Systems in)
The Amateur Radio Service)

PR Docket No. 93-85

To: The Commission

REPLY COMMENTS OF THE AMERICAN RADIO RELAY LEAGUE, INCORPORATED

The American Radio Relay League, Incorporated (the League), by counsel and pursuant to Section 1.415 of the Commission's Rules [47 C.F.R. §1.415) hereby respectfully submits its reply to certain of the comments filed in response to the Notice of Proposed Rule Making (the Notice), 7 FCC Rcd. 2202 (58 Fed. Reg. 17375, released March 29, 1993). The Notice proposes certain rule changes to determine the proper obligation of amateur radio stations in message forwarding systems for message content. In response to the comments filed pursuant to the Notice, the League states as follows:

1. There was a significant number of comments filed in this

and-forward station in a data message network, are properly accountable for the violative message; 2) the originator of the violative message is in all cases to be held responsible for the violation, with the first store-and-forward operator held responsible for either authentication of the source of the message or the screening of the content of it; and 3) the definition of "repeater" in the notice is overly confining and requires revision.

2. These comments support the position taken by the League in this proceeding. There were one or two commenters who maintain that only the originator of the offending message should be held responsible for the violative content. Such a position, however, ignores certain realities of both the nature of data communications and the enforcement process. It is difficult in some cases to ascertain the identity of the originator of the message, and it is not useful to allocate responsibility for rule violations in such a way as to make enforcement impossible or impractical in individual cases. The characteristics of data message forwarding systems are such that an offending message has the capability of extensive, continued propagation. Such is not the case with respect to voice transmissions, which cease once the originator terminates the transmission. As the League noted in its comments:

The burden of proof on the Commission in enforcement cases has in the past included a requirement that a violative transmission be specifically shown to have been made by a particular individual. James R. Weeks, 30 RR 2d 1651 (Rev. Bd. 1974). In that case, the Safety and Special Services Division, Private Radio Bureau, was unable to sustain its burden of proof where a violative message was monitored from a distance, and identification of the alleged violator was based solely on the use of a call sign. There had been no direction finding or voice

identification techniques used. The Review Board held that the Administrative Law Judge was left with no reliable basis for concluding that the accused licensee had in fact made the transmissions. Using this case as an example, it can be seen that there are difficulties in a regulatory scheme in which only the originator of a brief data message is held accountable for its content. Such a plan leaves little room for the traditional self-enforcement efforts of amateurs; and that is the real basis for the high overall degree of compliance with rules in the Service to date.

The Commission has proposed a compromise, attempting to balance the ability to enforce its content regulations in the context of automatic and other data message forwarding systems involving multiple amateur stations, and the encouragement of the development of those systems.

3. The League continues to be concerned about the proper identification in the proposed new rules of the "first forwarder". This concern was not directly addressed in the comments other than by the League, but the numerous commenters from the Pacific Northwest, in their comments, stated that the "first forwarder" should be defined as the first store and forward message system in which the message is repositied and further transmitted after storage. As the League's comments noted, the "first forwarder" who should have the obligation to preclude a content-violative message from propagating further in the system is the control operator of the first store and forward system "downstream" from the originator in the message forwarding network. As noted by the League, the concept of "first forwarder" has no practical application in virtual-circuit protocols, for example. The creation of an obligation on the part of the "first forwarder" must be accompanied

by a finding that the first forwarder, as defined, has some actual ability to exercise the control necessary to fulfill the obligation. If the first forwarder of an offending message is not a store and forward bulletin board system, but is, rather, for example, a digipeater, the control operator of the digipeater is technically the "first forwarder" in the message forwarding system of stations, but is not one with the ability to review a message for content prior to moving the message along.

4. The comments appear to agree that the obligation of the

take into account ACSSB repeaters, linear translators, or certain amateur television repeaters which use vestigial sideband AM type transmissions. Neither do all repeaters retransmit "instantaneously" the input signal, as there is always a propagation delay.

6. Thus, though the comments filed do not support the proposed appendix contained in the Notice, they do support, with but one or two exceptions, the concept of originator and first forwarder liability in cases of forwarding of content-violative messages in message forwarding systems. This is a reasonable compromise. They also support the liability obligations of repeater control operators. The League suggests that the Commission has enunciated an appropriate, workable policy relative to control operator responsibility for repeaters and data message forwarding systems, which accommodates the need for enforcement from time to time, encourages amateur self-regulation, and at the same time precludes unreasonable restrictions on data message forwarding systems, thus encouraging their development and readiness for public service and emergency communications. With some substantial changes in the text of the proposed rules, better to implement the policies enunciated in the Notice, the Commission will have relieved the Amateur Radio Service of apprehension in the development of new systems, due to uncertainties from recent past interpretations of control operator responsibility which have appeared unnecessarily restrictive.

Therefore, the foregoing considered, the American Radio Relay League, Incorporated, respectfully requests that the Commission


incorporate the League's proposed changes in the rules to be adopted in this proceeding, and that it finalize the policies proposed in this proceeding as soon as possible, with the modifications contained in the League's comments and in these Reply Comments.

Respectfully submitted,

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